Res Cases 3-361(9-9)

App F. IX-4

1936. (My)

File No. 84-3

Serial Nos. 1-2

Previous References
Mng 284-35(1-2)
" Dep 91-35
" 153-37(1-2)

Letter References
Jeung. 6K-41-12
MB 6 cr. 41. 3-6.
226-43-1-10. PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two

Part B for October 1938

SUBJECT.

Appeal petition of Adike Muni Nanjundaiah re Sarepakulu Chathram and Kalyanotsavadhi at Chintamani.

No 631 dy 29-10-38 — Two petitions

WD 0206—GPB—22,500—13-8 37

In favour of Lin. Asst. Govt. Secy. No objn to interfere with the orders already passed in the matter

M Singh
4/11/38

G. R S. APF F. III—1]

GENERAL AND REVENUE SECRETARIAT.

(Mysore)

NOTES.

File No. 84 - 38

FILE HEADING.

Appeal petition of Adike Muni Nanjundappa Chinnamani - Kolar District

FROM Adike Muni Nanjundappa. Chinnamani

No. — Dated 7. 9. 38 Received 7. 9. 38

Diary No. 287 | Enclos. 3 | Spare copies | Serial No. 1

BRIEF ABSTRACT OF LETTER

States that he preferred an appeal to the Mysore Commissioner to property known as Kempakala Ramachandrieh Chawdiy together with surrounding House Garden and Seven Shops situated in Chinnamani Town against the order of the Deputy Commissioner Kolar but it was rejected.

NOTES AND ORDERS.

1) Certified Copy of D.C's order has not been produced (Vide Flag S.) i the order appears to have been passed prior to 18th Oct 1935: it is not known when the M.C. rejected the appeal preferred by the petr against the D.C's order & as no Certified Copy of the M.C's order is appended, it is impossible to say whether the appeal was barred by time or caused by it.

NOTES—First Sheet

WD 69—GBPM—5,000—14-7-34

Appeal per q Roche Mum rangwala
of Chintamane 2

1113 File No 84 of 1938. General and Secretariat

Appeal, the P.W.D bill be returned to the Counsel for the petr for representation of the same with a certified copy of the M.C's order appealed against.

~~Instructions~~, Para 141 of the manual of General circulars and standing orders requires that appeal petitions should be accompanied by an authenticated copy of the order appealed against. Or whether an appeal lies to the Mamlatdar Court against the order of the Dy. Comr., Kolar Dt., in this case. (Vide Sec. 38 cl. (1) of the Religious and Charitable ~~Regulations~~ Institutions. Regulation). It is not known whether the petitioner has appealed to the Mamlatdar Court in this case, nor has he sent a copy of the Mamlatdar Court's order in this case. submitted for orders.

This is not exactly an appeal but is merely a petition. If agreed a reply with the P.W.D views may perhaps be called for

Yes 1-2-39

Suppose there are papers re this in the Secretariat. Please point them out. PWD 1/2/39

Appeal per A. Clerke Muni Nanjundappa of Chintamani re: Kampakala... Chowtry lands Chitra belonging to it.

General and Revenue Secretariat

Muz File No. 84 of 1938. [App. F. III—

Serial No.

b) Law 3-36-Sls 1-9 & Muz 15/3-37-2 are put up. Subs Courts refer to para 5 supra

Es 16.9.38 7) The only question — whether in the light of the judgment, the orders which are final can be now allowed to remain. or appeal. The Law Dept might comment

8) In the alternative. The Advocate might kindly be asked to take such steps as he may be advised to

Govt Secy 9) A. Mayhew 16-9

Asst Secy Law

10) It is true that the findings of the Court on the main issues in the case are against the Muzrai Officers But in any subsequent suit, the said findings do not operate as res judicata as the Plaintiffs' suit is wholly dismissed and as the Defts (Dy Comm'r) cannot appeal from the findings on such issues

Law 10/9 219

GENL 16 SEP 1938 1731

NOTE—Contn. Sheet.

WD 0417—GPB—30,000—8-9-36

Appeal of Adike Narasimhappa &c.
Claiming the Shops belonging to the late

Sec., File No. &c. of 1938. General and Sec

Serial No.

were being wholly in his favour.
Moreover the next suit will not be
between the same parties or persons
claiming through them. The principal
defendant in the next suit would be
the Sub-Division Officer, Chikballapur
who was not a party to the previous suit
(O.S. 20 of 35-36). For this reason also
the adverse findings in O.S. 20/35-36 do
not operate as res judicata.

It may also be added
that on the evidence placed before
the Court it was possible to take
a view different from the one that
the Court has taken on the main issue.
It is also possible that better
evidence may be forthcoming on
the side of the Asst. Officer if and
when the next suit is filed.

Any suit under Section
21 of the Religious and Charitable Institutions
Act has to be filed within six months
from the date of the order of the Asst
Officer. It may therefore be difficult
for the plaintiffs in the next suit

Appeal of Adike Venugopalappa re. Kanyana Chenlliny & shops belonging both in Chintamani Town.

General and Revenue Secretariat — Mysore File No. 84 of 1938. — [App. F. III—2

Serial No.	

to get over the bar of limitation.

In these circumstances I think, the petitioner's contention need not be conceded, and the question, if any, may be awaited.

BKR
12.10.38

Dept Secy (Mys) for WC)

11. In the above circumstances no notice need be taken of the petition as it may be rejected

Spl Secy 15/10 Spl 12.10.38
Govt Secy 14/10 Spl

Hon'ble Member) 14/10

Spl 15/10 Inc

17 Oct 38 sent
18)

2 No 631 of 29.10.38 to Mr Adike Muni Venugopalappa of Chintamani intimating that there are no reasons to interfere with the order already passed in the matter.

RECEIVED
SECRETARIAT
OCT 14 1938
No. 3692

NOTE—Contn. Sheet.

WD 0417—GPL—30,000—6-9-36

Mus appl 2-9-38

re: Kanjikala

File No. 84 of 1937

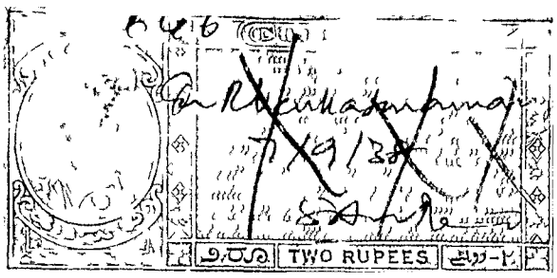
General and Revenue Secretariat

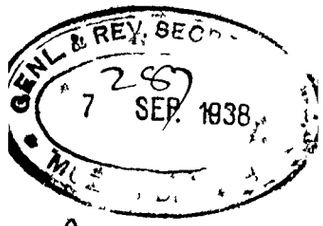
Serial No.

Memo no 6328 29.10.38 from the Muzrai Commissioner forwarding copy of the above for information.

B
1/11/38

2/11





BEFORE THE GOVERNMENT OF H. H. THE MAHARAJAH OF MYSORE,

B A N G A L O R E.

Muzrai Petition No. 2 /38-39.

Petitioner:--Adike Muni Nanjundappa,
Chintamani,
Kolar District.

Under Section 39 of the Mysore Religious and charitable Institutions Regulation, the Petitioner abovenamed begs to state as follows:--

1. That on a Petition filed by Karpaklu Ramachandriah and his brothers, of chintamani the Assistant Commissioner, Chickballapur Sub Division, ordered on /-5-1935 that property known as "Karpaklu Chattram" purchased by Petitioner from Karpakalu Thimmarajiah under Registered sale deed dated 8-8-1930 is one belonging to a public, religious or charitable institution and is to be taken charge of for management by Government as a Muzrai Institution under Section 19 of the said Act.

2. The Deputy Commissioner, Kolar, having confirmed the said order in App. No. 39 34-35, the Petitioner filed a suit O.S. 20/35-36 in the court of the District Judge, Bangalore, which was disposed of on 29-6-1938 by the Additional District Judge, Bangalore. From the certified

certified copy of the Judgment produced herewith it can be seen that the property referred to above which has been the subject matter of the proceedings is held not to be a public, religious or charitable one and the order of the Sub Division Officer and the Muzrai Officer is not correct. Thus the ground on which the management of the property by Government was deemed necessary is no longer Exists. If the decision of the Civil Court is to prevail ~~further~~ as regards the nature of the property, Petitioner is not liable to be deprived of the property which he has purchased for so heavy a sum as Rs.8800.

3 The learned Additional District Judge has while upholding Petitioner's claim to the property as his own has dismissed the suit on the technical ground that the proper Officer to be sued is the Sub Division Officer and not the - Deputy Commissioner.

4 The Petitioner submits that, apart from this view not being in consonance with the -- provisions and spirit of the Act, it cannot affect the merits of the Petitioner's claim. The Judgment establishes beyond doubt that no action is called for under the Act.

5. Petitioner had preferred an appeal to the Muzrai Commissioner, in Appn No 19/35-36. against the order of the Deputy Commissioner, Kolar, but it was rejected on the score of the institution the suit above mentioned.

6. As, notwithstanding the decision of the

the Civil Court on the merits of the case in Petitioner's favour there is risk or contingency of the Subordinate Muzrai Officers proceeding to enforce orders of the Sub Division Officer, this Petition is filed soliciting favour of definite orders to be issued that proceedings may be kindly dropped.

7. Petitioner besides paying a heavy sum for purchase of the property has spent large sums in improving it and incurred much expense for the litigation forced upon him by the relations of his Vendor.

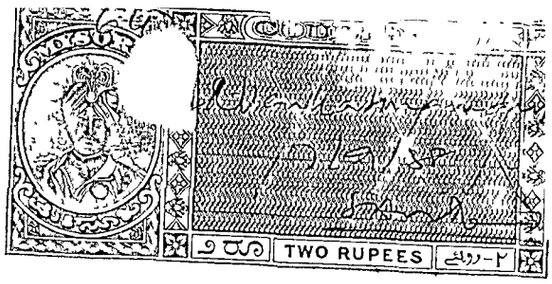
8. It is prayed that orders may be passed not to disturb Petitioner from the property and declaring those passed by the Sub Division Officer and Deputy Commissioner not to be -- operative. (Two copies of the order copies of Sub Division Office, and Deputy Commissioner are herewith produced.) —.

Bangalore,

Date.

Petitioner.

N. Venkata Ramaiya
Adv. for Petr
7-9-38



~~In the Court of the~~

Before the Govt of H. H. the Maharaja of Mysore.
Bangalore

Original Case No. of 1938--1939.

Appellant Plaintiff.		*Respondent Defendant.*
Pelikanji,		
Sri Kemmuninanjundappa	**Vs.**	

1, I the Pelikanji above named do, by these presents, retain Sri Ramakaramaiya & Sri Srinivasaiya Advocates to appear and conduct the above case on my behalf to judgement

2. I further empower him to do all necessary acts in the above case, to execute any decree or order that may be passed in my behalf, and to receive from the Court all documents, refunds and all sums of money that I may be entitled to get and grant receipts therefor.

3. I also undertake to confirm and ratify all the acts done by the said Advocates or by any other Advocate on his behalf in so doing.

7-9-1938.
BANGALORE.

Personally known to me and signed in my presence · ACCEPTED.

Advocate

Advocate for

Sold by B. Narasimha Iyengar, Proprietor Vidyasagar Book Depot Chickpet Bangalore City.

H. SUBBA RAO,

1. 6..35.

0 8 0

R.C.R. No. 106. 34/35.

In the court of the Assistant Commissioner, Chikaballapur Subd Division, Chikkaballapur.

Dated 7th May 1935.

Revenue mis case No. 13 of 32-33 present M. Ismail Shereff Esq., B.A., Assistant Commissioner Chikkaballapur.

Petitioners:--

1. Karapakala Subbrayappa son of Karapakala Ramachandraiah, Chintamani town.
2. Karapakala Suryanarayaniah,
3. Karapakala Ramaiah.
4. " Sreeramaiah.
5. " Ramachandraiah.

4-5 of Bangalore City.

Opponents.--

Muninanjundappa son of Adike Channabasappa Adike Merchant, Chintamani.

The Petitioners presented a petition on 22-10-1932 alleging that the property known as Karapakula Ramachandraiah's choultry together with the surrounding flower garden and seven shops all situated in Chintamani Town intended for charitable purposes have been sold by one Thimmarajiah who was managing the charity on their and therefore fathers behalf to utter stranger by name Muninanjuntappa(the Opponent) who belongs to a different community for a consideration of Rupees 8,800-0-0 under a registered sale deed and praying that action may be taken under section 19 of the Mysore religious and charitable institution Regulation 7 of 1927 and possession of the said properties be taken under Government management.

The opponent filed his objection on 7-12-1932 stating that he is not aware of the alegation contained in para 3 of the petition about the property being intended for charitable purposes etc., and also the statement contained in para 6 of the petition.

The Petitioners reply to the objection was filed on 6-12-1933.

The Petitioner examined the following witnesses including himself 1. Karapakala Subbrayappa I Petitioner.

2. Thimmarajiah.

The following exhibits were filed on behalf of the petitioner:--

Ex:-A Registered sale deed dated 18-8-37. Under which the father of the Petitioner is said to have purchased the chatram and garden land.

Ex:- B & C. Sale deeds executed by Muddamma for having sold some positions of the land to the vendors of the Petitioners' father.

Ex:- D. Copy of Physal pathrika.

Ex:- E Copy of Bandh Pahani Register.

Ex:- F Schedule of properties in the partition deed dated 13-12-1886.

Ex:- G. Portion marked in the book wherein the details of the distribution of moveables is noted, (on the reverse of sheet No. 2) setting apart Rs.2000/- for the Chatram (period Ashadha Sudda Shasti to Ekadasi in the year Vyaya.)

Ex:- H. Petition marked on sheet No. 21 in the above book in the construction of the Choultry.

Ex:- I. Certified copy of the Notice issued on 24-6-1901 to Karupakala Lakshminaraniah and others.

Ex:- J. Certified copy of statement given by Karapakala Sivaramaiah and Karapakala Lakshminaranaiah before the Amildar of Chintamani on 8-7-1901.

Ex:- K. to K. O. Day Books.

Ex:- L. Partition deed dated 11-1-1920.

Ex:- L" Schedule of immoveable properties attached to Exhibit L.

Ex:- M Portion marked in the Note Book containing an agreement between the brothers (Petitioners) is management of the Chatram.

Ex:- O. Certified copy of assessment list of Chintamani Municipality containing particulars in Door Nos. 817, 38, 40 to 46.

Ex:- P. Site Plan of the Chatram.

Ex:- P" Portion marked in the plan Exhibit P.

The Opponent examined 6 witnesses including himself.

They are:--

1. Siddabasavaradhya, Chintamani.
2. Vaisya Ramaiah "
3. Vaisya Ramalakshmamma
4. Vokkaligar Thimmaiya, Chintamani.
5. Vodda Munibayi.
6. Adike Muninanjundappa (Opponent)

The following exhibits were filed on behalf of the opponent:--

1. Contract of sale deed dated 2-8-30 executed by P.W.2

3. Portion marked Exhibit 3 in copy of Deposion of P.W.2 in C. Miss. No. 23 of 30-31 before the 1st Magistrate Kolar.

4. Portion marked Ex (3a) in the above Exhibit No. 3.

S-12. Lease deeds executed by Suriah and others in favour of P.W. 2 Thimmarajaiah.

13-15 - Do -

16-20 Portions marked 3-3 to 3 G in copy of Deposition in C Mis. No. 23/30-31 vide Ex. 3.

21. Portion marked G in the deposition of P.W.2 on 5-8-32 in C. Mis. No: 23/30-31.

22. Copy of order marked Ex. XV in C. Mis. No. 23/30-31. dated 31-8-32.

23. Copy of petition marked Ex. XVI dated 22-7-31 presented to the Revenue commissioner by the petitioners in this case.

24. Portion marked Ex. P. in copy of Deposition of opponent in this case) in C. Mis No. 23 of 30-31 in 1st Court Kolar on 17-8-1932.

Heard the arguments of Mr. H. Subba Rao, Pleader for the opponent and Mr. M. Subba Rao for the Petitioners on 18-2-35 and on 2-3-1935.

" O R D E R"

The subject matter at this case pertains to a petition presented by Karapakala Subbarayappa and four others as noted above in the premiable praying for action to be taken under Section 19 (1) of the Mysore Religious and charitable institutions Regulation VII of 1927 in as much as half the portion of a chatram must be their ancestors for purpose of attending rest and shelter to the people resorting to the Town and Shandy of Chintamani has been wrongfully alienated and sold away to the opponent Mr. Muninanjundappa of Chintamani.

2. The course of the inquiry in this court is clear from the preamble to this order. The Petitioners have examined two witnessess and filed a large number of exhibits. Similarly the opponent has examined and filed a large number of exhibits as detailed in the preamble above.

3. The case has become a bit complicated owing to the previous proceedings under section 145 criminal procedure code among the same parties. The building in dispute is known as karapakula Chatram and there is a flower garden and mantaps attached to it. There are seven shops facing the road driving the shandy and running towards Srinivaspur, one

one Thimmarajiah the natural brother and adopted cousin of the Petitioners sold away the shop and half the choultry for a sum of Rs.8800 on 8-8-30 and handed over possession to Mr. Muninanjundappa there was serious dispute over the actual possession of this building and proceedings were un-vtiated under section 145 criminal procedure code which resulted in declaring the opponent to belegal possession of the shops and half the building. The Petitioners then approached the Muzrai department praying that the building in question came under the definition of section 2 of the Mysore religious and and charitable institutions regulation and praying that action be taken to resume the building owing to the unauthorised alienation and to see that the benevolent objects of the founders were carried out under section 19 of the said regulation.

4. The case has been going on from a long time. Even though in such cases only a summary inquiry is necessary, a detailed regular inquiry has been held. To my mind, the only question at it seems to be to determine if the building is an institution covered by section 2 of religious and charitable institutions regulation are not and if so what the alienation now brought to light comes under the scope of section 19 of they said regulation and whether it is necessary to take action under the above sections as prayed for by the petitioners.

5. I have examined the centre mass of evidence that has been presented in this case. It seems to me that taking the points on which both the parties are agreed under commonly accepted we can come to sale definite conclusions nece sary to deside the case decide the case.

6. The first point is whether the building is an institution which comes under the perview of section 2 of the

the Mysore Religious and Charitieable institution Regulation. (The case of the first party is that it is a charitable institution set apart as a place of rest for travellers and the people reserting to Chintamani Shandy. The point is not seriously contested by the opponent on the other hand, he seems to say that he has reparied the building and disusing the furtherance of charity. There is then the roundabout testimony of Government records in which the Building has been recognised as a charitable one meant for the benifit of the better cast as of Hindu community. The building is free of assessment. The site on which shops are put up was an original encroachment but latter canferned freely owing to the benevolent nature of the Institutions. The old mantapas are alleged to have been extended into shops which were put up about more than 30 years ago. It is seen that this building excised at least puor to 1887 and that as then that at the time of partition when all parties defined their shares and got them this building was left severally along as it was regarded a charitable institution. It is likely that this partition may have been the immediate provocation for construction of shops in this place are highly remunerative. On the average the shops appear to realise about Rs.500 per annum and all people may have contributed for it. Since their till 1930, shops were being looked after by the alience probably with the tacit consent and approval of the other members of the family when suddenly their alienation to an utter stranger of a different community distrubed the equaminaity of the other members of the family.

7. It will be seen from the above that the building is a charitable are originally built, and maintained as such at least from 1887 up to date of alienation. Hence it comes clearly under the pervi w of section 2 of the Mysore Religious and charitable insitutions regulation and that this court has jurisdiction to inequire in to the alienation.

8. The fact of alienation by way of sale to the Opponent of half the portion of the building has now get to be looked into. It is seen that Timmarajiah apparently lost interest in the charity and wished to get some money and sold it to the opponent as it were his divisible property. There seems to be also a certain amount of fraud and collusion in the whole affair. The opponent is a long standing resident of Chintamani who can be resonably expected to know that the Chathra was meant for the Public that it had been set apart as such at that time of division. At any vaste the very reputation of the building of Chatra and flower garden for temples should have made him look in it the matter carefully and to investigate the right and title of the seller. Probably the highly advantages situation of the property should have made him run a risk knowingly. The party, has is seen, is unable to deny that the institution was not a chatra but says that the petitioners the selves wanted to sell the other half to him but as he did not want it, They began to give him trouble. There is no evidence to prove this. On the other hand facts point to other indications. A man who has purchased half the property will be anxious to purchase the other half also and the Petitioners would even to-day realise a decent sum considering the locality, if they private right was recognised and if they were actuated by any selfish motives, they would have welcomed the alienation than tight against it. Even now then prayer is to resume the shops and chathram and run the institutions in consonance with the intentions of the original donors and this does not look like self interest.

9. Neither the records nor the evidence offered by the opponent point to any legal necessity for the alienation in the interest of the institutions it is not stated now the money received for consideration was utilised it really passed hands and if it was in the interests of the institutions now is it shown that Chatram had any debts to liquidate which a

which a sale was necessary. There is absolutely no relieving or extenuating circumstance in the entire transaction which has to be strongly condemned and is found to be completely unauthorised and the more I examin the records the more I feel convinced of the need to take action under section 19 of the Mysore religious and charatable institutions regulation. I therefore direct under section 19 (1) of the said regulation the said property viz. half the choultry and shops be restored and that the government should take possession there of on behalf of the Institution.

10. I am not prepared to concede any claim or right to the opponents in the said institution. He is out and out a capitalist desiring to take possession of the Institution he has no manner of connection with the family of the original donors. Thimmarajaiya also has shown utter in capacity to be in charge of Institution plus inquiry has shown that the choultry is situated on the road opposit to and close proximity community of Shanay. The temptation to private people to alienate and make some money will be very great. Further the shops are yielding a good rent but it is not being devoted to the development of the institution which could be and deserves to be devoloped and improved. There are already complaints that attempts were made by same to sell some portion of the choultry. The Petitioners are also agreeable for the management of Government. Sothis Institution Hence the institution will be taken upon its entirely by the Government inspection of any unauthorised Alienations, real, fancied are contemplated and will be managed as a Muzrai Institution. The Muzrai department will no doubt, I hope, provide for same representation of some of the members of the original founders or any committee of management or Dharmadarsis that may be formed for the purpose.

In open court (Sd) M. Ismail Sheriff,
7-5-1935. Assistant Commissioner,
Chikkaballapur.

"Copy"

Sd/- G. Gundu Rao, Head Clerk, Sub D. Office,
for the opponent by Mr. H. Subba Rao, Pleader

(0 - 8 - 0)

Copy application of Mr. T. Ramachar, pleader for the Appallent Muninanjundappa dated 18-10-35 praying for copy of the order passed in Muzarai appeal No. 3 of 34-35.

IN THE COURT OF THE DEPUTY COMMISSIONER, KOLAR.

District Dated Kolar -- --. -- --

Present:- T. G. Ramaia Iyer Esqr., B.A.,

Deputy Commissioner.

No. Muzarai Appeal 3/34-35.

APPELANT.	RESPONDENT.
Muninanjundappa son of Adike Channabasappa, Adike Merchant, Chintamani.	1. Karupakala Subbarayappa 2 " Suryanaraniah 3 " Ramaiah, son of Karupakalu Ramachandraiah 4. Karupakala Sreeramaiah, 5. " Ramachandriah son of K Lakshminarasiah Merchant Sree Rama Hall, Bangalore.

This is an appeal against the order dated 7th May 1935 of the Sub Division Officer Chikkaballapur in Rev. Mis cas No. 13 of 1932-33 directing that the seven shops and half the choultry known as Karupakala Ramachandriah's Choultry and the flower garden attached to it bought by the appeallent, be taken up and managed by the Government. -- -- --

FACTS OF THE CASE.

There is a building in Chintamani known as Karapakala Chatram in front of which there is an open yard intended as a retreat for vehicles that go to Chintamani Town for the Shandy. This open yard is surrounded by Mantapas on two sides and a flower garden on the third side. The Mantapas towards the south facing the Srinivaspur Goribidanure Road were extended into shops. This extention issaid to have

have been made after two persons Karupakulu Ramachandriah and Sivaramaiah the father and uncle of the 1st three respondent were divided from the joint family. At the time of this partition this choultry was left undivided. The Municipality took objection to the construction of the these shops as there was on encrochment of the Municipal land which objection was waived at a later stage as this was a charitable building.

The chattram was managed by one Karapakulu Thimmarajiah, the natural brother of the respondents and the adapted son of Sivaramaiah till 1930 when he alienated the seven shops and half the Choultry and the garden to the Appalleant for Rs.8,800/- under a registered sale deed on the strength of which the appleant tried to take possession or the properties. There was a dispute regarding the possession between the appleant and the respondent resulting in proceedings under section 145 of the Criminal procedure code before the 1st Magistrate Kolar who directed that the appellant be re-instated into the possession of the property. -- -- --

Then the respondent pefictioned to S. D. O. Chikballapur praying that action may be taken under Section 19 of the Mysore religious and charitable institutions regulation 7 of 1927 and that possession of the said properties betaken under Government management. The S. D. O. after an enquiry held that the building is a charitable one and maintained as such atleast from 1887 up to date of alietion and therefore directed that half the choultry and the shops be restored and that the Government should take possession there of as the respondent are also agreeable to the Government management under section 19 (1) of the Muzrai regulation 7 of

of 1927. The present appeal against the order of S. D..O. Chikballapur.

O R D E R.

The appleant purchased the shops from Thimmarajiah. Obviously he cannot, by the purchase acquire more rights than the vender himself had. The vendor Thimmarajiah has stated that the shops belonged to their family charity a chattram. He has stated that his natural brother K. Lakshminarayaniah (father of the respondents 4 and 5) and (his natural uncle) adoptive father Sivaramiah to gether converted the mantaps of the chattram into shops and that the patta of the shops stood in the name of Lakshimarayanayya before he got it transferred to his name to qualify for Municipal Councillor ship. Thimmarajiah who sold the shops to appeallent has admitted that the shops belonged to the chattram, a charitable institution and that income from the shops was being used for the chattram. The sale to the appeallent therefore amounted to alienation of property, endowed to charitable institution, apart from the statement of vendor. Thimmarajiah and his natural brothers, there also other circumstances indecating the same conclution, some of these are refereo to in the order of the Sub Division Officer.

Property belonging to a charitable institution having been wrongfully alienated by sale, the Muzarai Officer's order directing the restoration of the alienated property to the institution and assuemption of possession there of by Government under section 19 (1) of the Muzrai regulation is correct and ther is no ground for interference. The appeal is dismissed.

Sd/- T.G.Ramaiyer,
Deputy Commissioner. 17-10-35.

"Copy"

Sd/- M. B. Seshagiri Rao,
Sist. Sheristedar,
Koldar Dist. 30-10-35.

IN THE COURT OF THE Additional DISTRICT JUDGE, BANGALORE DIVISION.

17
1-7-1938
Returned 1 & 4 0-3-0 0-2-0
Used 89 & 7 03-00-2-0
14-13-4
011-8
Rs 15-9-0
Words 7360, 400, 50, 320, 825, 70, 940, 320, 2410

Bangalore, Dated 29-6-1938.

Present:- G. Paramasiviah, Esq., B.A., LL.B.,

ADDITIONAL DISTRICT JUDGE,

BANGALORE DIVISION.

Original Suit Number 20 of 1935-1936.

Plaintiff:- Adike Muninanjundappa.

- Versus -

Defendants:- 1. The Muzrai Officer and Deputy Commissioner, Kolar District. 2. Karpakala Subrayappa. 3. Karpakala Suryanaraniah. 4. Karpakala Ramiah. 2, 3, and 4 are the sons of Karpaka Ramachandraya. 5. Karpakala Sree Ramiah. 6. Karpakala Ramachandraiah.

Suit for cancellation of the Order of the Muzrai

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Officer (Deputy Commissioner) Kolar District, Kolar, dated 17-10-1935 in Muzrai appeal No.3 of 1934-35 and for declaration that the plaintiff is the sole and absolute owner of the schedule properties and for costs of the suit. The suit was filed on 11-5-1936.

The statement of defendants 2 to 6 was filed on 7-9-1936 and that of the 1st defendant was filed on 19-10-1936. The reply by the plaintiff was filed on 21-12-1936. The suit came on for settlement of issues on 23-12-36; and the following issues were framed:-

1. Is the suit not maintainable for the reason set forth in the written statement?

2. Has this court no jurisdiction to grant the reliefs asked for?

3. Is the plaintiff entitled to the suit schedule properties?

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4. Do not the properties mentioned in the schedule belong to the Karpasale Chatram? Karapakalu.

5. Is not the order of the Sub Division Officer, Chickaballapur binding on the plaintiff?

6. Is the 1st defendant a necessary or proper party?

7. Has a notice as required under Section 80 of the Code of Civil Procedure issued?

8. Is the suit not in time?

9. Is there no cause of action to the plaintiff?

10. To what relief if any is the plaintiff entitled?

Issue No.4 is amended as follows: (Vide order sheet dated 22-6-1938)

Is the suit schedule property a public, religious and charitable institution coming under the purview of the Mysore Religious and Charitable Institutions Act.

The suit came on for hearing on several dates

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and finally came on arguments on 24-6-1938.

The witnesses examined in the case and documents filed are separately filed.

The court pronounced the following:-

J U D G M E N T.

The plaint allegations are as follows:- The plaintiff is the sole and absolute owner of the properties described in the suit schedule, having purchased the same from the former owners thereof namely Karpakalu Thimmarajiah and his sons under a registered sale deed dated 8-8-1930 for a cash consideration of Rs.8,800/-. Ever since the date of sale the plaintiff has been in possession and enjoyment of the properties in his own right. Some time after the sale and after the plaintiff improved the plaint schedule properties at considerable expense Defendants 2 to 6 attempted

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to disturb plaintiff's possession of the suit schedule - properties. Proceedings under Section 145 of the Criminal Procedure Code were instituted before the Court of the Special First Magistrate, Kolar in Criminal Miscellaneous Case No.23/1930-31 and an order was passed therein that the plaintiff was entitled to be in possession of the properties without any disturbance. Subsequently the Defendants 2 to 6 with a view to harass the plaintiff petitioned to the Assistant Commissioner, Chikballapur Sub-Division alleging that the suit schedule properties along with their own share in item No.1 (Chatram) may be taken possession of by Government and managed as a Muzrai Institution. These proceedings were obviously started and carried on in collusion under the instigation of plaintiff's vendor Thimmarajiah. The materials placed before the -

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Assistant Commissioner in support of their petition were altogether unreliable and in any case quite insufficient to justify any action being taken. Notwithstanding this, the Assistant Commissioner allowed the petition and the first defendant on appeal confirmed the said order on 17-10-1935 in Muzrai Appeal No.3/1934-35 of which the plaintiff became known subsequently. The orders of the Assistant Commissioner and Muzrai Officer (Deputy Commissioner) above referred to are unjust and unwarranted by the circumstances of the case. There are no proper grounds for holding that the schedule properties are those of any Religious or Charitable Institution or that these were ever used or treated as such. The 7 shops referred to in the suit schedule were built by plaintiff's vendor Thimmarajiah and rents thereof collected and utilised by him for long

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without any reference to any charity or religious purpose and absolutely for personal benefit. The other items in plaint schedule were likewise held and enjoyed as private property. The proceedings initiated are not at all bonafide and merely a device adopted in collusion with plaintiff's vendors to defraud the plaintiff. The overwhelming points in favour of plaintiff and repelling any presumption of the suit schedule properties being those of any Religious and Charitable Institution, the antededent circumstances, the dealings with respect to similar properties in the locality have not been taken into account. The reasons given in the orders referred to above are unsound and untenable. The plaintiff and his vendors having thus been in possession and enjoyment of the suit schedule properties in their own and absolute right beyond the statutory period, the rights

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of Government if any, with respect of schedule properties have been barred by limitation and adverse possession. The order of the first defendant is in any case not warranted by the provisions of the Religious and Charitable Institutions Regulation or the circumstances of the case. Certified copy of the said order is produced herewith. As the order, if allowed to stand, affects plaintiff's right to the plaint schedule properties and as in spite of registered notice served on the first defendant on 24-2-1936 the - said order has not been rectified this suit has been filed. The cause of action for the suit arose within the jurisdiction of this court on 17-10-1935 when the order of the first defendant was passed and thereabouts when it was known to plaintiff. The suit is within time as the court was closed owing to summer vacation. The suit is filed in this

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court as per Section 21 of the Mysore Religious and Charitable Institutions Act of VII of 1927. Defendants 2 to 6 are impleaded as proforma parties as it was at their instance the order in question was passed.

2. The plaintiff prays for the following:-

(1) For Judgment and Decree cancelling the order of the Muzrai Officer (Deputy Commissioner) Kolar District, Kolar dated 17-10-1935 in Muzrai Appeal No.3/1934-35, (2) For declaration that the plaintiff is the sole and absolute owner of the schedule properties and (3) For costs of the suit and for such other reliefs as are expedient and just under the circumstances of the case.

3. The written statement of the first defendant is as follows:- The suit is not maintainable against the first defendant as the order of the first defendant which is

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sought to be cancelled is not one to which Section 21 of Regulation VII of 1927 under which the suit is purported to ~~be~~ filed, is applicable. The reliefs sought for in the plaint cannot be granted in law by this Honourable court. No cause of action has accrued to the plaintiff against this defendant by reason of the facts mentioned by the plaintiff in his memo of particulars. Even assuming that there is a cause of action the suit is clearly out of time. The property mentioned in the schedule to the plaint was part of the property endowed for a charitable purpose by its owners Karpakalu Ramachandraiah and Karpakalu ~~Sivaramiah~~ Sivaramiah as far back as 1887 or thereabouts. The charitable institution is a chatram in Kolar known as Karpakalu Chatram. Karpakalu Thimmarajiah the alleged vendor to the plaintiff is the adopted son of the above mentioned Sivaramiah and

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was merely managing the chatram and its properties by virtue of being a member of the family. He had no right to convey the property or any rights in it to the plaintiff and such conveyance if any, is not binding on the first defendant. It is true that Defendants 2 to 6 petitioned to the Assistant Commissioner, Chikballapur that the schedule properties and other properties belonging to the chatram may be taken possession of by Government and that the Assistant Commissioner allowed the petition and the same was confirmed by the first defendant. The 7 shops referred to in the plaint were not constructed by Thimmarajiah as alleged. Certain mantaps which were in existence as far back as 1887 when the endowment was made were extended into shops more than 30 years ago to render the charitable institution self-maintaining out of the rents therefrom.

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The plaintiff who claims to have derived his title in 1930 and his alleged vendor who was merely managing the institution could not put forth any adverse claim. The order sought to be set aside being one passed by the - officer concerned and in discharge of his statutory - duties cannot be set aside by this court. The order now in question is correct in law and is a proper adjudication on the merits of the case. The order in question is one ~~ma~~ made under Regulation VII of 1927 but is not one coming within the scope of Section 20 of the Regulation. The suit is further statutorily barred by Section 40 of the aforesaid Regulation. The plaintiff cannot claim to deduct the period of time sought to be deducted in para 8 of the plaint. The plaintiff having already sought other means of relief by way of appeal and otherwise from the original

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order against him and having elected and obtained an order from the higher authorities cannot now maintain the present suit asking for the relief as prayed for by him. The first defendant is not a necessary or proper party to the suit as the suit if any at all must have been filed within the time prescribed and against the order of the Assistant Commissioner Chikballapur. No proper notice as required by law and by Section 80 of the Code of Civil Procedure has been given and the suit is not maintainable on that ground.

4. The written statement of the Defendants 2 to 6 is as follows:- It is incorrect that the plaintiff is the sole and absolute owner of the plaint schedule properties and that his vendor Thimmarajiah was likewise its owner. Thimmarajiah was only a co-owner along with defendants 2 to 6

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in respect of the properties in controversy. These defendants are not aware of the genuineness and the passage of consideration regarding the registered sale deed dated 8-8-1930. The statement that the plaintiff has been in possession and enjoyment of the properties is not correct. Plaintiff's vendor had no such rights as to pass on to others. It is wrong to say that these defendants attempted to disturb the possession of the properties. It is true that proceedings were started under Section 145 of the Criminal Procedure Code and it terminated in plaintiff's favour regarding the possession of the property. The motive imputed to the defendants when they sought the help of the Muzrai Officers is totally unfounded and it has been held so by the Muzrai Officer. The defendants 2 to 6 sought legal advice at Bangalore regarding the expediency of filing a revision

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petition to the High Court against the order of the learned Magistrate and the advice given was that since these - defendants did not claim any interest for their own ends and since they wanted to preserve the properties for the - original use to which they have been dedicated the more appropriate resort would be the Muzrai Courts which have exclusive jurisdiction of dealing with such properties. There was no kind of collusion between Thimmarajiah and these defendants. The statement that the shops were built by Thimmarajiah and that their usufruct was being enjoyed by him for his own personal benefit or at any rate were intended to be enjoyed for his own personal benefit are not true. These defendants have acted bonafide throughout and the tribunal whose help was the only appropriate forum for the purpose and their orders are perfectly correct.

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Neither the Plaintiff not his vendor have been in possession of the properties as absulute owners in their own right to the execution of Defendants 2 to 6. The Plaintiff does not choose to state when the possession became adverse. The possession of his vendor was always thought that of a co-owner and never adverse to Defendants 2 to 6. The starting point for limitation is the order of the Muzrai Officer who in this case was not the Deputy Commissioner but the Sub-Division Officer and the Deputy Commissioner was merely an appellate authority whose order does not start the limination. Therefore the Sub-Division Officer Chikballapur should have been impleaded as the first Defendant and not the Deputy Commissioner. The order of the Muzrai Officer was passed on 7-5-1935 and the suit not having been brought within six months from that

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that date is barred by limitation.

5. The Plaintiff by way of reply reiterates the plaint allegations and states that the law itself provides remedies for erroneous orders by Muzrai Officers and as such the Plaintiff is entitled to seek cancellation of the Order in question, that the Defendants 2 to 6 having acquiesced in Thimmarajiah's ownership and enjoyment and the sale in favour of the Plaintiff are estopped from questioning in any manner and the plaint schedule properties are alienable, that Thimmarajiah having been in exclusive possession of the suit schedule properties in his own right for long over the statutory period until the sale of the same to Plaintiff the proceedings initiated by the Muzrai authorities were absolutely barred by limitation, that the period of limitation for the suit is to be computed from the date

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date of the order of the Deputy Commissioner was communicated and not as pleaded from the date of order of the Sub-Division Officer, that neither of the above orders has been formerly communicated to the plaintiff, that the first Defendant having entertained the appeal and the other Defendants having submitted themselves to it, it is not open to them now however to urge that the Sub-Division Officer's order was final and was the one with respect to which the suit has to be filed, that the Plaintiff is perfectly entitled to file a suit by virtue of the provisions of Regulation VII of 1827 and the order in question is one under the category of those liable to be set aside by this court, that there is no hindrance under Section 40 or any other Section for the suit being proceeded with and that the notice issued to the first Defendant is correct

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correct and affords sufficient compliance with the necessary requirements.

6. I propose to deal at first with the 7th issue in the case whether the notice as required under Section 80 of the Code of Civil Procedure has been issued to the first Defendant, who is the Muzrai Officer and Deputy Commissioner Kolar District. Exhibit A is produced from the custody of the first Defendant and though it is not dated it purports to have been received at the office of the first Defendant on 24-2-1936. Under Section 80 of the Code of Civil Procedure no suit can be instituted against a public officer in respect of any act purporting to be done by such public officer in his official capacity until the expiration of 2 months next after the notice in writing has been given to him. The suit has been filed on 11-5-1936 within

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whichr is more than two months from the date of the service of the notice Exhibit H on the first Defendant. Therefore this contention is not tenable.

7. The next point for decision is whether the Plaintiff is entitled to the suit schedule properties and this forms the 3rd issue in the case. The sale in favour of the Plaintiff of the suit schedule properties is not seriously denied by any of the Defendants. What they contend is that the suit schedule property could not be sold as it is a public charitable institution and the Plaintiff did not acquire any title to the same as his vendor had no right to alienate being only a manager thereof for the time being. Therefore my finding is that the Plaintiff has purchased the property and is entitled to be in possession of the property if it is held that it is not a public

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public charitable institution. The 4th issue as originally framed is whether the properties mentioned in the suit schedule belong to Karpakalu Chatram. The said issue was amended and as amended it is as follows :-

" Is the suit schedule property a public religious and charitable institution coming under the purview of the Mysore Religious and Charitable Institutions Act ".

The burden of proof that the institution is a public, religious and charitable institution is heavily on the Defendants. The second defendant who is examined as Defendant's witness 1 deposes that his father Ramachandriah had an younger brother by name Sivaramiah, that they were undivided, that his father purchased the vacant land on which the suit schedule property is built under Exhibits I and II, that Muddamma got the Exhibits I and II executed

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executed for and on behalf of his father, that Thimmarajiah one of his brothers was taken in adoption by his uncle Sivaramiah, that his father got a flower garden planted in the vacant land purchased by him for charitable purposes, that visitors used to stay there and the public used to make use of the flowers, that at the time of purchase the land was survey No. 5 and Exhibit IV is a copy of Phyasal patrika ಫೈಸಲ್ ಪತ್ರಿಕೆ for the year 1893, that Exhibit V is an extract from the pahani, according to which 31 guntas of land was given to his father by Government free of costs, that was included within the premises of the chatram in front, that Exhibit VI is a copy of the partition deed according to which there was a division of the family properties between his father and his uncle, that the suit schedule property is not mentioned in Exhibit VI, that

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that Exhibit VII is the book relating to the division of moveables and Exhibit VII (a) relates to the arrangement as regards the construction of the suit property, that as per entries Exhibit VII (b) and VII (c) Rs. 2000/- was set apart for the construction of the chatram, that the property had been assessed prior to the date of Exhibit IV and no assessment was levied after the date of Exhibit IV, that his father got foundation laid for constructing shops that after the death of his father his uncle Sivaramiah and his brother Lakshminaraniah got the shop built, that Exhibit IX is a deed of partition evidencing division amongst the brothers, that the chatram in question was not taken into account as it was endowed for charity, that Exhibit X is the book containing entries regarding division of moveables, that the entry Exhibit X (a)

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Exhibit X (a) relates to the management of the property in question, and that Exhibit XI is the account book - containing entries from 11-9-1918 up to 18-5-1930, that as regards maintenance of the flower garden Thimmarajiah used to contribute half of the expenses and he (the witness) and his remaining ~~kakkx~~ four brothers meet the other half, that expect the right of management neither Thimmarajiah nor they had any right to allienate the property, that the open yard was being used by visitors for parking their carts, that there was no restruction as regards the use of the chatram by the public, that except the shops which were assessed in 1917-18 the rest of the building is not assessed, and that Exhibit XII is the extract of the year 1918-19. Exhibits I and III under which the land on which the suit property is built do not any indi

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indication as to whether the land was purchased for being endowed for any charitable purpose. Exhibit IV shows that the assessment on aportion of the land on which some trees had been planted was reduced and that the occupant thereof should take proper care of the trees without cutting th green trees and that the proceeds thereof must be utilised for the improvement and for other charitable purposes. It does not show that any land was given by Government free of cost as deposed to by Defendant's witness 1. As per Exhibit V the occupants of the land which was old Survey No. 5 are shown to be Karpakalu Ramachandriah and Muddiah and 61 guntas of the said survey number is shown as Government waste land. At the back of Exhibit V there are remerks made that the Government waste land was in the occupation of Karapakalu Ramachandriah who had

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had built a chatram and planted a flower garden for charitable purposes (ಧರ್ಮಕ್ಕೆಂದು) that he had built a chatram unauthorisedly and planted the trees in the Government waste land which had to be disposed of separately. Those remarks purport to have been made by the then Shanbhogue and from this alone it is not possible to infer that Karapakalu Ramachandriah had endowed the property for charitable purposes. Exhibit VI which is stated to be a copy of the partition deed is in ~~the~~ Telugu and the Defendants have not chosen to file a translation even though they were called upon to do so. I cannot therefore make out anything from Exhibit VI but it is admitted that the suit property is not referred to in the partition deed. Merely because it is not referred to in the deed of partition it cannot be inferred that the suit property had been given

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given away for charity. On the other hand as contested on behalf of the Plaintiff if it had been given for charity the parties to the said partition would not have failed to mention it as such in the deed of partition. Likewise Exhibit IX dated 11-1-1920 which is a deed of partition evidencing division of properties amongst the second Defendant and his brothers is not of much help as it is admitted that even in this document no mention is made of the suit schedule property. Again on behalf of Defendants Exhibit XV is relied on and it is the objection statement filed by the Plaintiff before the Assistant Commissioner, Chickballapur Sub-Division, during the enquiry held by him as regards the suit schedule property. In para (6) of Exhibit XV it is stated as follows :-

" The chatram and the shops etc; were not in good condi-

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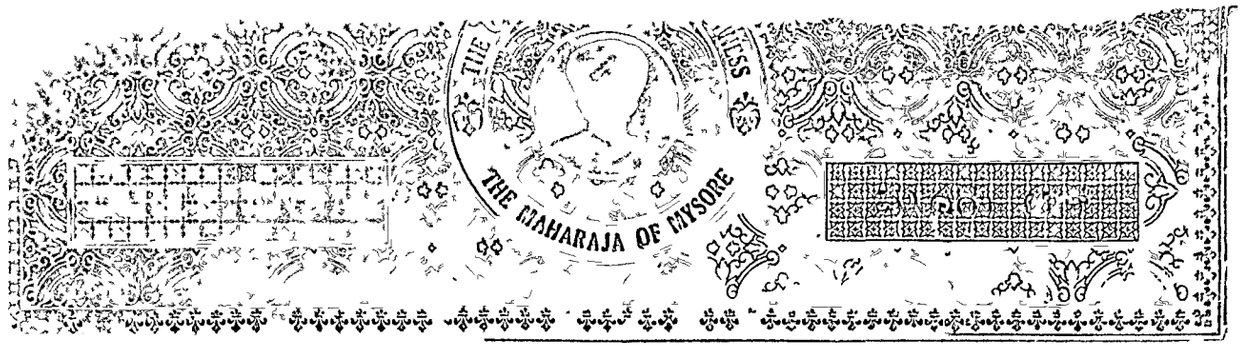
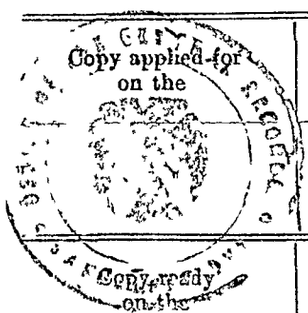


condition when Opponent purchased them. Though he is entitled to all the realisations from the building, he has not utilised them for his benifit but spent a lot for its upkeep. He has not usurped for his private use, but has improved it and made it convenient for travellers and has given rooms to High School students free of rent. " From this the Defendants wanted the court to infer that the Plaintiff has practically admitted that the suit schedule property is a charitable institution. I do not think that such an inference can be drawn because except stating how he has spent the income and how he has been making use of the building, the Plaintiff has not admitted that the suit schedule property is a charitable institution. What he intended can be clearly made out from what he has stated in para 8 of Exhibit XV which runs as follows :-



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" The Religious and Charitable Endowment ~~Religious~~ Regulation does not apply to thie ~~Building~~ building because it does not come under the perview of Section 2 Clause (ii) of that Regulation and so this Court has no ~~jurisdiction~~ jurisdiction to take cognizance of this case under Section 19 of the Regulation " Exhibit XII is a certified copy of tax assessment list relating to Chintmani Town where the suit schedule property is located. According to Exhibit XII a portion of the suit schedule property bearing No. 817 is assessed at R. 7/- and the seven shops bearing Nos. 40 to 46 are assessed at Re. 1/- each. The portion of the building bearing No. 38 is marked as " Dharmachatra " and it is not assessed. From this it is argued that inasmuch as the portion called Dharmachatra is exempted from taxation it must be held to be a charitable institution. If

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If this argument holds good the portion bearing No. 817 in which a Police Inspector is stated to have been living at that time presumably as a tenant under Karpakalu Lakshmi-naraniah and the seven shops which are assessed be taken to have not been endowed for charity. Again even in regard to the portion known as Dharma Chatram and which was exempted from taxation it cannot be stated that it was endowed for any charity by the owner thereof. It may be that it was exempted from taxation as no rent was being collected from those who used to stop there. As a matter of fact there is the testimony of the second Defendant that he has no personal knowledge as to when the suit chatram was created as public charity, that before the shops were built there was no income from the suit schedule property, that Thimmarjiah the Plaintiff's vendor got the lease deeds executed in his favour, that he was

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was collecting rent and paying it to him and other brothers, that the katha of the property was in the - - - name of Thimmarajiah, that none of them applied for the - cancellation of the municipal tax on the shops allegint that they were endowed for charity and that carts were parked in the open yard with their permission or that of their servant. Even the 4th defendant states if any one wants to stay in the choultry he has to obtain their permission or the - permission of their servant, and that Thimmarajiah was paying the municipal tax. It is also admitted that the widow of this witness's younger brother Ramalingiah has sold a portion of the chatram to others. Exhibit C is a copy of a sale - deed dated 11-3-1926 relating to a sale of the portion of the chatram perhaps Door No. 817 mentioned in Exhibit XII by the plaintiff's vendor to one Siddabasavaradhya for - Rupees 5250/- and the sale deed purports to have been attested by all the [illegible] the

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the natural brothers of Thimmarajiah including the defendants 2 and 4. These defendants gave a evasive reply to the - questions put to them whether they have not attested the sale deed by saying that they cannot say whether they have attested it or not unless they look at the original. They admit however that the names of persons mentioned in Exhibit C as having attested the sale deed do not refer to any one else except themselves. I therefore hold that they attested the sale deed and that they do not wanted to admit it because it ~~does~~ go as against their pleas now urged in this case. Now coming to the entires in the account books Exhibits X, XI, XVII, XVIII, XIX, XX, XXI, XXII, and XXIII, they relate to the amounts spent for the construction and upkeep of the - building and the flower garden and there is nothing to show that the income from the building was spent towards any -

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any charitable purpose significantly enough these were not at all referred to at the time of argument. Defendant's - Witness No. 2 deposes that Thimmarajiah was permanently - residing at Chintamani, that like and his brothers entrusted the management of the chatram on condition that he should give them the surplus if any and to recover from them the expenses if it exceeded the income. From this it is clear that the savings if any from the income of the buildings were utilised by Defendant's witness No. 2 and his brothers. Exhibits A to A-7 are the lease deeds executed in favour of Thimmarajiah the plaintiff's ~~xxxxx~~ vendor in regard to the shops in question. The shops are described therein as having belonged to Thimmarajiah. Exhibits D to D-8 are Katha extracts showing that the katha of the suit schedule property stood in the name of Thimmarajiah and his son was paying kandayam since 1922 upwards

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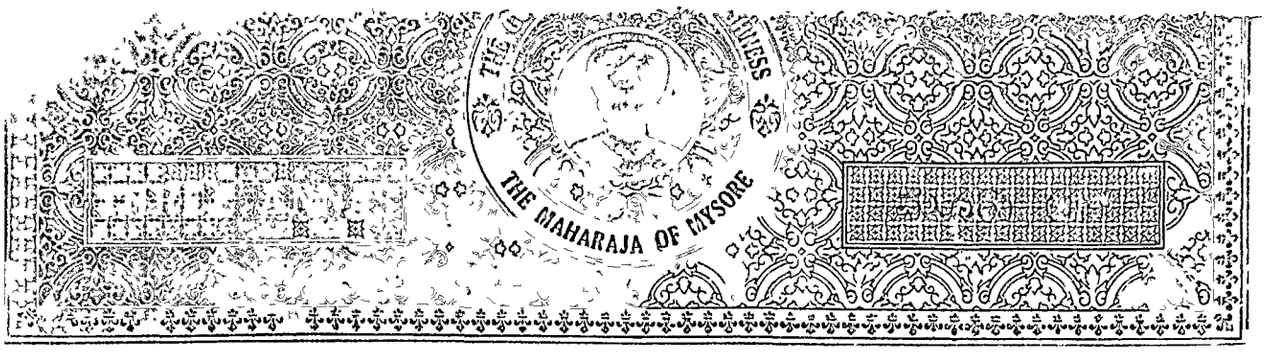

upwards till 1930-31. Likewise Exhibits E to E-12 are the khirdi extracts showing the payment of kandayam by Thimmarajiah. Exhibits F and G are the extracts from the proceedings relating to transmulation of katha showing that the katha of the suit property stood in the name of Lakshminaraniah, elder brother of the second defendant and was transferred to Thimmarajiah in August 1922. It is no doubt true that there is evidence to show that the property is known as Karpakalu Chatram but from this alone it cannot be inferred that it is endowed for charitable purposes. In All India Reporter 1921 Sind it is held that if a building is known as a Mutt or Temple and even if there is evidence of public worship it is not sufficient to justify a court in holding that a particular property had been dedicated to the public. In this case there is ample documentary and oral evidence to show that

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that the property was being treated as private property by the plaintiff's Vendors and their ancestors and a portions of the building are even sold to others and the Defendants 2 and 4 and others members of the family have attested the concerned sale deeds signifying thereby that the property is a private property liable to be alienated. The plaintiff has examined Plaintiff's witness No. 1 T. Aranthapadmanabhiah, Octroi Manager, Chintamani who deposes that Thimmarajiah had let out his shops and was collecting rents for his own benefit that he was not spending anything out of it for chartiy, that the ~~shops~~ had been assessed and Thimmarajiah was paying the tax as long as he remained in possession of the shops, that visitors would remain in the chatram with the permission of the owners as it was open to the general public, that there are 5 or 6 chatrams in Chintamani and that except Nama -

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Nama Rangiah's choultry the rest are all private properties, even though they are called chatrams. Plaintiff's witness No. 2 Gopala Reddy deposed that his father owned what is called Chowda Reddi chatram in Chintamani Town, that seven people including himself are in possession of the same, that his elder brother's son has hypothecated his share to one Kasthur Suriah, and that the suit schedule property is a private - property. Plaintiff's witness No. 3 Mallappa Octroi Mutsaddi, Chintamani, deposes that Thimmarajiah was not doing any charity out of the rent he got from the shops and that the property in question ~~xx~~ is private property. There is no reason as to why ~~w~~ these witnesses should be disbelieved. The defendants have thus failed to prove that the suit property is endowed for public, charitable or religious purpose~~s~~. There-fore - my finding on the amended 4th issue is that the suit schedule

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schedule property is not a public religious and charitable institution coming under the purview of the Mysore Religious and Charitable Institutions Act.

8. The first issue in the case is whether the suit is not maintainable for the reasons set forth in the written statement. It is urged on behalf of the defendants that as the order of the first defendant sought to be cancelled is not one to which Section 21 of the Regulation VII of 1927 under which the suit is purported to have been filed is applicable, the plaintiff is not entitled to get by law any of the reliefs claimed in the plaint, that there is no cause of action against the first defendant, that the order sought to be set aside being one passed by the officer concerned in discharge of his statutory duties cannot be set aside by this court, that the plaintiff having already sought other means of relief

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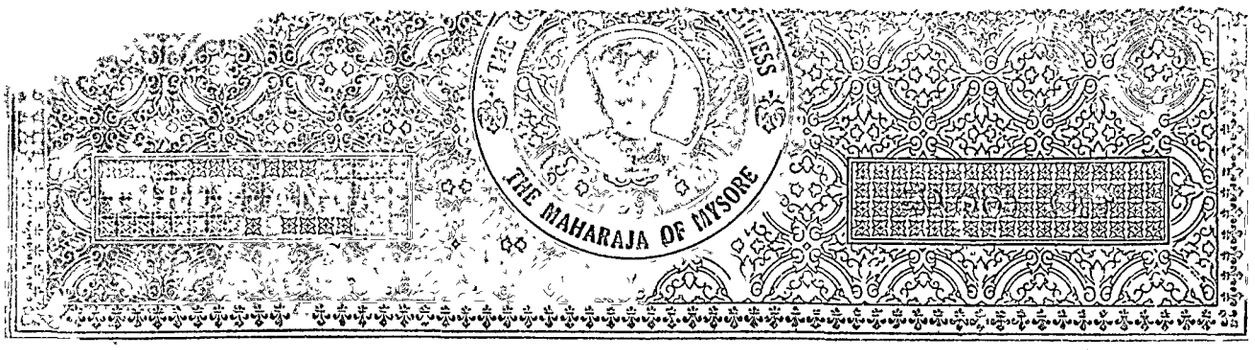
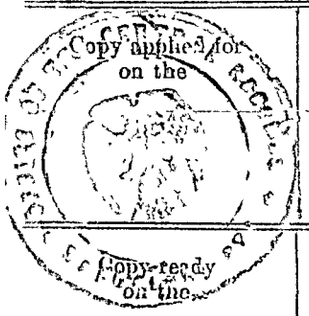


relief by way of appeal and otherwise from the original order against him and having elected and obtained an order from the highter authorities cannot now maintain the present suit asking for the relief prayed for. It is not however denied by the defendants that the order which the plaintiff seeks to be set aside is one passed under the Mysore Religious and Charitable Institutions Act VII of 1927. According to Section 21 of the above xact any person who is aggrieved by an order of the Muzrai Officer passed under Sections 18,19 or 20 may, within six months, from the date on which such order is - communicated to him, file a suit in the court of the District Judge, in whose jurisdiction the greater part of the property is situate, for cancellation of such order, making the - Muzarai Officer one of the defendants. Again in Section 19 Clause (1) it is stated that where property belonging to a



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a religious or charitable institution has been wrongfully - alienated or transferred by way of sale, mortgage, lease or otherwise, the Muzarai Officer may, within six years from the date of such alienation or transfer, give noice to the alienee or transferee and hold a summary enquiry in accordance with the provisions of chapter XII of the Mysore Land Revenue Code and direct that possession of such property be restored to the institution or that the Government assume possession - thereof on behalf of the institution. As per rule 3 of the rules framed under the above act Assistant Commissioner in charge of Sub Divisions as Muzarai Officers have been empowered to exercise the powers of the Deputy Commissioner as Muzarai Officer under Sections 10, 19, 30, 32, 33 and 35, of the - Regulation. Again under Rule 4 the Deputy Commissioners as Muzarai Officers have been empowered to decide appeals under

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the proviso to Section 38(i) against the orders of Sub-Division Offfcers passed under Rule 3. It is conceded that the order passed by the Assistant Commissioner of Chikballapur - Sub Division which is marked as Exhibit XIV is an order passed under Section 19(1) of the Act. Under Section 21 any person who is aggrived by an order of the Muzrai Officer passed under Sections 18, 19 or 20 may within six months from the date on which such order is communicated to him file a suit in the court of the District Judge---. Therefore a suit lies in regard to order passed by the Assistant Commissioner under Sect on 19(i). As per rule 4 of the rules framed in the act an appeal also lies from such an order to the Deputy Commissioner under privisoto Section 38(i) but it is nowhere provided that a suit will lie in regard to an order passed by the Deputy - Commissioner in appeal under provisio to Section 38(i). In

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such an order is not liable to be challenged by a suit. I am afraid that this contention is not tenable. It is no doubt true that with regard to an order passed by the Assistant Commissioner under Section 19(i) both remedies are available namely an appeal to the Depyty Commissioner and a suit. There are also certain orders such as those passed under Sections 10, 30, 32, 33 and 35 of the Act by the Assistant Commissioner which are not liable to be set aside by a suit even though appeals can be filed to the Deputy Commissioner against those orders because under Section 21 only, orders which are passed under Sections 18, 19 or 20 are liable to be challenged by a suit. Therefore merely because an appeal is allowed against the order passed by the Assistant Commissioner under Section 19(i) of the Act it does not mean that it is not liable to be challenged by a suit also. My findings

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My findings therefore on the first issue is that the order of the first defendant which is sought to be cancelled is not one to which ~~Section~~ Section 21 of Regulation VII of 1927 is applicable and that the suit is not therefore maintainable. From this it follows that this court has no jurisdiction to grant the relief asked for namely to cancel the order passed by the first defendant and this is my finding on the second issue in the case.

9. The next issue is whether there is no cause of action ~~to~~ for the plaintiff to bring this suit. As already stated the order of the first defendant which is in question is not one of the orders which are liable to be set aside in a suit as provided for under section 21 of the Mysore Religious and Charitable Institutions Act. Therefore I hold that there is no cause of action ~~to~~ for the plaintiff to bring

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bring this suit.

10. The next point for decision is whether the order of the Sub-Division Officer, Chikballapur is not binding on the plaintiff. In para 4 of the plaint it is mentioned that the orders of the Assistant Commissioner and Muzrai - Officer (Deputy Commissioner) are unjust and unwarranted by the circumstances of the case. I have already held that the suit property is not a public religious and charitable institution and as such it is to be decided now whether the Sub-Division Officer had powers under Section 19 Sub-Section 1 to pass the order in question Exhibit XIV after holding an enquiry under that Section. He can only exercise the jurisdiction conferred on him under the above Section in regard to property belonging to religious and charitable institutions when they have been wrongfully alienated and not -

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not otherwise. Therefore the order in question must be held to be ultra vires of the powers conferred on him by the above provision of law. In my opinion the said order must be held to be null and void as against plaintiff having been passed without jurisdiction. My finding therefore on the 5th issue is ~~xxx~~ that the order of the Sub-Division Officer, Chick-balâapur is not binding on the plaintiff.

11. There is only one point remaining to be decided and that is whether the suit is not in time and this forms the 8th issue in the case. The order of the Deputy Commissioner which the plaintiff seeks to be set aside was passed on 17/10/1935 and in the memo dated 2-9-1936 filed by the plaintiff in answer to the particulars ~~xx~~ called for by the first defendant it is stated that the plaintiff became aware of the above order on 18/10/1935 and there is nothing

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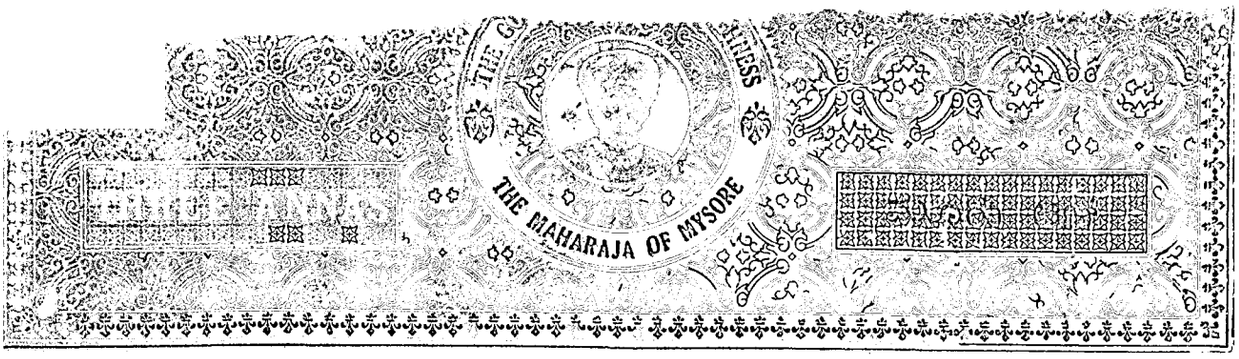

nothing to show that the order was communicated to the plaintiff earlier. Even if it is taken that the plaintiff became aware of the order only on 18-10-35 the suit is filed more than six months after that date having been filed on 11-5-1936. Under Section 21 of the Mysore Religious and Charitable Act VII of 1927 a suit in regard to an order of the Muzarai Officer passed under Section 19(i), (it is conceded that this suit relates to an order passed under Section 19 Sub-Section (1)), must be within six months from date on which such an order is communicated to the party. It is contended on behalf of the plaintiff that as on the last day on which the suit had to be filed the courts had been closed on account of summer vacation, it must be taken to have been filed in time as it was presented on the day the courts reopened. On behalf of the defendants it was urged on the strength of a case reported

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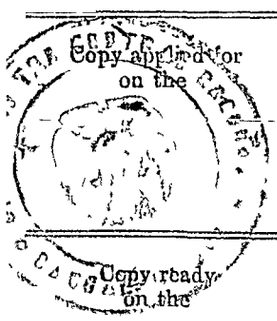
reported in 40 Mysore High Court Reports Page 330, that the privisions of Section 4 of the Limitation Act under which where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court reopens are not applicable to the facts of the present case which is based upon the provisions of a special law namely the Mysore Religious and Charitable Institutions Act by virtue of Section 29 of the Limitation Act, which lays down that nothing in the Limitation Act shall affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law. The case on which the learned counsel for the defendants only related to Section 15 (Clause (2) of the - Limitation Act under which the plaintiff wanted to exclude



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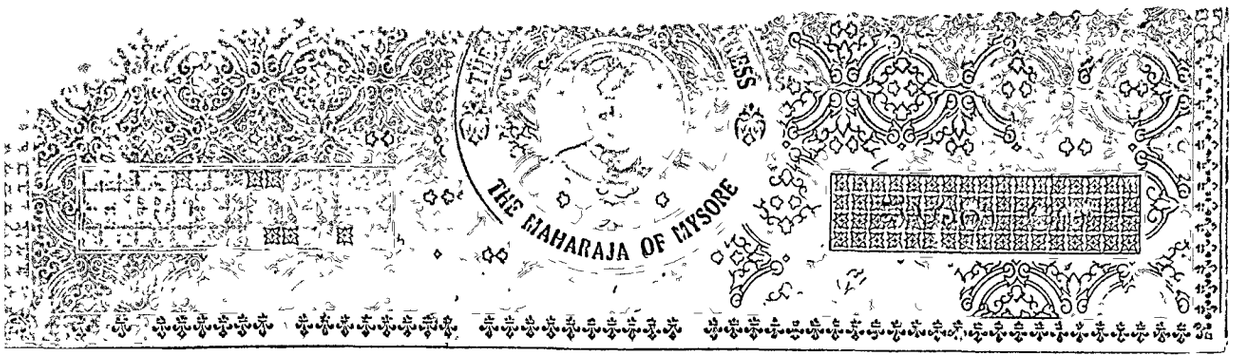

exclude from the period of limitation fixed by the Muzrai - Regulation the time necessary for a notice under Section 80 of the Civil Procedure Code. In this case the learned Counsel for the plaintiff did not rely on any of the provisions of the limitation Act but relied on section 10 of the General Clauses Act No. III of 1899 according to which, where by any Regulation made after the commencement of the General Clauses Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, if the Court or Office is closed on that day on the last day of the prescribed period, the act or - proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open. The Proviso to the above Section is that nothing in the above section shall apply to any act

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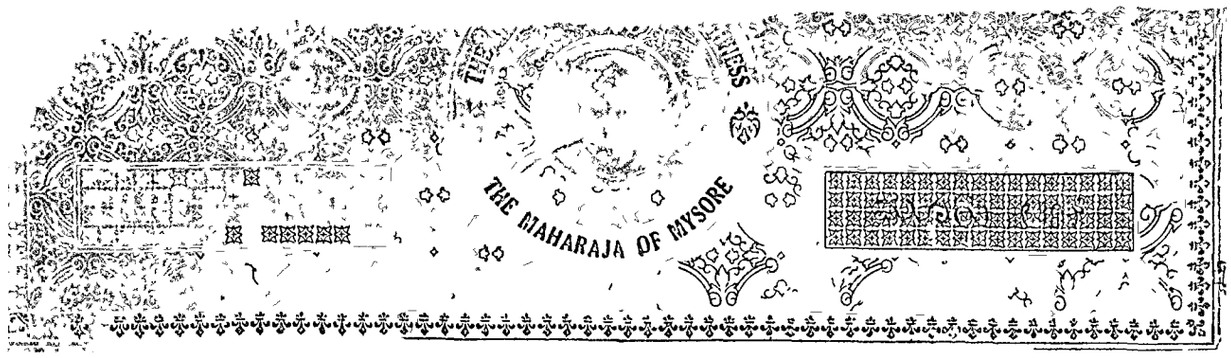

act or proceeding to which the Indian Limitation Act applies. In a case reported in 26 Madras Law Journal Page 307 it is held that although the provisions of the Limitation Act are inapplicable to suits provided for by Section 77 of the Registration Act, the general principle recognised in Section 10 of the General Clauses Act applies, to them. I therefore held that the suit is in time.

12. In the result the plaintiff's suit is dismissed, not because he has failed to establish his title to the suit schedule property, but because of the relief which is prayed for namely the cancellation of the order passed by the first defendant cannot be granted by this court as no suit is maintainable under any provisions of the Mysore Religious and Charitable Institutions Act VII of 1927 in regard

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regard to the said order. As the suit is dismissed on the technical ground of not being maintanable in the - form in which it is brought I direct the parties to bear their own costs of this suit. Pleader's fee being Rs. 50/-

Dictated to the Steno-Typist and pronounced in Open Court.

Signed/- G . Paramasiviah,
Additional District Judge, 29-6-1938.

" True Copy "
Narayana
Head Record Keeper.

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Mr. R. Venkatanarasimhaiya

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1/7/38	21/7/38	14/7/38	11-7-38 → 18-7-38 Adj. called upon 14-7-38	12-7-38 → 14-7-38

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14/7/38	14/7/38	Raghuttama Rao	

SUBJECT .....

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Section Mis

File No. Pr - 38

Serial No. 2

4 Chits

Diary No. of letter replied to .....

No. 631

To

General and Revenue Secretariat

( )

the *193* .

Mr Aroka Muni Narjundappa
of Chintamani
C/o R. Venkataramaiya 588 Malleswaram
Advocate - Bangalore City

Date of issue 29-10-38

Signed by [illegible] S. Hussain

Letter ref. no. dated 7.9.38 of this office against the M-C's order in Inam case No 19/35-36 on the file of this office & stating that his possession of the property known as Ramachandraiya's Choultry together with the surrounding flower garden & seven shops all situated in Chintamani town may not be interfered with pending the disposal of the appeal filed by the [illegible]

List of enclosures .....

Copied by .....

Examined by .....

WD 0278—GPB—30,000—4-3-38

66

informed that Govt see no reason to interfere with the order already passed in the matter ~~so far passed on the Municipal Govt~~ in the subject and that his ~~Govt~~ is rejected.

B.O

Sd 21.10

for Secy (Forest)

6328/29-10-36

Copy to M.C. for information.

B.O

Sd 21.10.36

for Secy (Forest)

CS
20/10

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

67

Bangalore, Dated, 20th October 1938.

No. 631/Mug 84-38-1

ENDORSEMENT.

To

Mr. Adike Muni Manjundappa
of Chintamani,
C/o R.Venkataramaiya, Esq., M.A.,
LL.B.,
Advocate, Bangalore City.

***

With reference to petition dated 7th September 1938 appealing against the Murrai Commissioner's order in Murrai appeal No. 19/35-36 on the file of his court and praying that his possession of the property known as Karupakalla Ramachandraiya's Poultry together with the surrounding flower garden and seven shops all situated in Chintamani town may not be disturbed for reasons set forth therein, Mr. Adike Muni Manjundappa is informed that Government see no reason to interfere with the orders already passed in the matter.

By Order,

Srinivasan

for General Secretary to Government.